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Parliamentary Democracy: Enucleating Principia

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"As for democracy, why should we discuss acknowledged madness?"

Alcibiades

"If there were a people of Gods, it would govern itself democratically. Such a perfect government is not suited to men."

Rousseau

Introduction

To study the workings of Parliament, in a parliamentary democracy, is to study the workings of the polity's supreme political institution. Justification for such study derives from this fact. However, the singular importance of this sovereign body and the concomitant demands placed on it, contribute to its complex nature. It has many sides. Consequently, Parliament can be examined from many perspectives, the most popular being the rather obtuse angle which examines relations between Parliament and the public (ie. parliamentary government). Understandably, questions of representation, legislative efficacy and parliamentary mechanics, have been studied extensively.[1]

Almost invariably, these studies, either implicity or explicity, examine Parliament vis-à-vis the polity; the democratic rules considered are those impigning upon the general population: the rules of government. Parliament, by this logic, is deemed to be democratic if it treats its citizens democratically.

For obvious pratical reasons this may be the most important parameter to consider. Unfortunately, it is one of the most difficult. Deciding just what democractic behavior is -- what standard, measure or criterion defines democratic action? -- is an encumbering detail of formidable magnitude. Indeed, to walk this path of questioning is to prod down a well-worn trail: as long as men have thought about politics, they have had to think about democracy. Often it appears there are as many definitions of democracy as there are citizens of the polis.[2] (Perhaps, given the subject matter, this is only to be expected!)

This essay struggles to add another line to democratic theory's page in corpus of political philosophy. It seeks to understand democratic principles

through study of the theoretical and practical workings of an ostensibly democractic parliamentary institution, a notably more acute angle from which to study Parliament. To this end, relations and forms within a legislative assembly will be analyzed by resolving the principles of parliamentary practice from, in the first instance, a (historical) study of parliamentary procedure and, in the second, a case study of the third and fourth sessions of the Nineteenth Legislature of the Province of Alberta. These distillations will, in turn, be synthesized into a theoretical construct which will be argued to incorporate the principles of democratic government. It would be against these collated principles, this democratic standard, that the relations between a parliament and its people could be examined to determine if the polity were democratically governed. (This will not, however, be done in the course of the essay.) By this reasoning, parliamentary democracy exists if Parliament treats its citizens as it treats itself.

To speak of "government" (as in the phrase "government in a parliamentary democracy") is really to speak of ruling of regulating human conduct through codifying standards or principles which serve as mandates to citizens. Almost by defintion there is some reference made to "authority", that is, the power and/or right to enforce obedience to or compliance with such rules. As such, there are two components or elements which constitute "government", the nature of which determines the nature of the "government" (eg. making it democratic government, aristocratic government or tyrannical government). The first of these is the spirit or vital principles which, on being codified (one way or another), become the standing rule or rules of the body.[3] The second, is the source of authority enabling both the condification and the enforcement of these principles.

To speak of the government of Parliament is really to speak of

"parliamentary procedure" or "parliamentary practice". Parliamentary procedure is a term of considerable scope. Lord Campion, in his reputable work, An Introduction to the Procedure of the House of Commons, speaks of its relevance to three areas of parliamentary behavior: (i) the relations between the various levels of government (ie. House of Commons, Senate and the Queen); (ii) the rules, practices and conventions by which either House regulates its own proceedings (ie. Standing and Temporary Orders); and (iii) the machinery set up for its assistance (ie. presiding officers and other officials and committees).[4] For the purposes of the subsequent discussion, "parliamentary procedure" will take on a focussed meaning, co-extensive with the penultimate point above, viz., the rules, practices and conventions by which the House regulates its own proceedings.[5]

These "House rules" are entrenched and articulated in two bodies; one written, the other not. The "written body" includes the Standing and Temporary Orders of the House, the citations found in Beauchesne's Rules and Forms of the House of Commons of Canada and the text of Erskine May's Treatise on the Laws, Privileges, Proceedings and Usage of Parliament. The "unwritten body" is explicitely referred to in all Standing Orders under a general rule dealing with unprovided for contingencies, phrased in the following fashion,

> In all contingencies unprovided for, the question will be decided by Mr. Speaker and, in making his ruling, Mr. Speaker shall base his decision on the usages and precedents of this Assembly and on on parliamentary tradition.

These bodies have, over time, become inextricably related -- tradition being incorporated and codified in the House's Standing Orders and noted in the parlamentary texts, which, in turn, engender parliamentary tradition and practice. An exegesis of these texts and prolonged, exacting observation of parliamentary practice, enucleates a set of fundamental principles which can

be argued to constitute a parliamentary modus procedeni. More specificially, there are five principia characterizing the spirit of the House's Rules of Procedure and one important principle of authority from which individual members' rights and privileges are derived.[7] These will be examined individually, supplemented, where possible, by a historical discussion of the rules and provision of instances of examplary House behavior. Once abstracted and understood these fundamental principles will be construed as forming a paradigm of democratic principia and, as such, the sought-after "standard".

Section One

The "Rules of Order", by way of raison d'être, aim at managing the main problems of parliamentary business, identified by Sir Courtney Ilbert as:

> (i) how to find time within limited parliamentary hours for disposing of the growing mass of business which devolves on the government; and
> (ii) how to reconcile the legitimate demands of the government with the legitimate rights of the minority.[8]

In Britian, following the reforms of 1832, the new method of regulating procedure by standing orders first took hold. Lord Campion notes that this innovation in procedure corresponded to changes in the functions and powers of the House of Commons: the more important the House became in its own right, the more important the rules by which it governed its affairs became.[9]

The Canadian House of Commons, in 1867, adopted the British parliamentary tradition as its own, and with it, the basic principles of the standing orders of Westminister.[10] In March, 1906, the Legislative Assembly of Alberta followed suit.[11] This historical continuity legitimizes historical treatment of parliamentary rules of order, when necessary, and enables discussion of the rules in their nascent form, facilitating elucidation of principles unemcumbered by years of tradition, which, invariably, generate a phalanx of

exceptions. The architectonic principles permeating parliamentary practice are as follows:

(i) Procedural Justice:

A good deal of the rationale behind parliamentary procedure is encapsulated succinctly by Hatsell's dictum:

> And whether these forms be in all cases the most rational or not is really not of so great importance. It is much more material that there should be a rule to go by than what the rule is.[12]

Implied in this dictum, and tacitly acknowledged each time a member begrudgingly decides to agree to go along with the rules of the House, is the ideas that, in the words of Henry Sidgwick, "a verdict is just when it is a correct application of the relevant rule of law".[13] Brian Barry, in his stimulating work, Political Argument, cites three reasons as to why anyone other than a "rule worshipper" should take procedural or rule-based justice seriously.[14] First, any consistent application of a rule creates a crude variety of equality -- like cases being treated alike.[15] Second, if promulgated and known rules are applied, individuals can, if they choose, avoid the consequences of infringing them. Finally, rule-based justice tends to reduce the incidence of unfilfilled expectations.

The idea of procedural justice is an important democratic principum for the simple reason that it is always more likely than not to produce the "right results" -- whatever they may be -- because it merely specifies that everyone does the same thing.[16]

On November 25, 1982, in a rather heated and, at times, obstreperous discussion of the rules of order, particularly as they pertained to the question of privilege, the Leader of the Opposition, the Hon. Ray Speaker, disagreed with the Speaker's ruling and asked for an explanation of a ruling stipulating that a member can speak only once to a point of order. In responding, Speaker Amerongen relied heavily on procedural justice, stating:

> ... The Hon. Leader of the Opposition is asking for my reason under Standing Order 12(2), which he's entitled to do. I have given my reasons, I have nothing to add. If they're not satisfactory, that may be a matter of regret, but it doesn't provide grounds for extenuating the reasons.[17]

(ii) Flexibility and Adaptability:

The word "flexibility" derives from the latin flectere which means to bend, or specifically, that which will bend without breaking. Therefore, for survival's sake, the House must be governed by a principle of pliability, manageability and versatility.

The whole concept of parliamentary evolution and the role of precedent in the establishment aud authority of the rules of order speaks to the pervasiveness of the principle of flexibility. Parliamentary rules are, in this sense, Darwinian creatures -- only the fittest survive; only the most suitable and appropriate rules achieve longevity. The factor contributing most to the flexibility of the House rules is, of course, the Speaker's interpretation and application of those rules.[18] As always, matters of discretion depend on circumstances and circumstances are forever changing.

Moreover, the principle of flexibility is evidenced in several of the Standing Orders. For example, Chapter 4 of the Standing Orders of the Legislative Assembly of Alberta is comprised of 14 sections and 13 sub-sections governing questions, notices and orders. While this appears to epitomize inflexibility, leaving the House enswathed in a rope of rules, Rule 37 states:

> A motion may, in case of urgent and pressing necessity previously explained by the mover, be made unanimous consent of the Assembly without notice having been given under Standing Order 36.[19]

Moreover, all Standing Orders make some allowance for debate on matters of urgent public importance.[20]

To be flexible does not mean not to be vigorous in the application of rules.

Rules must exist and they must be adhered to when recognized as being relevant. However, rules must change to meet changed circumstances, for often it is the rules themselves which engender new circumstances. What is vitally important, and thus a democractic principum, is that the Assembly be inflexible on points of principle; that it tenaciously holds onto the idea of flexibility, embodying it in the House rules of order.

(iii) Moderation:

Moderation, derived from the latin moderare, which implies reduction and control, and, when conjugated, is related to words like modest, moderation and arbitrator, means to avoid extremes and be characterized by a temperate deportment. Its status as a democractic principum is assumed on pondering the rather weighty title of the guidebook of House proceedings -- "The Rules of Order". The fact that "order" is stressed explicitly in this manner, betrays the inherently conservative and temperate nature (almost to the point of being abstemious) of the Legislature.

Rules of Order really refer to the discipline and spirit of moderation which a large deliberative body has to either impose upon itself (or have imposed upon it) to maintain efficiency and regularity in the transaction of business. Anatomically speaking, the rules are the spine of Parliament and their formal and moderating characteristics in this role are captured well in a statement attributed to Speaker Onslow that:

> Nothing tended more to throw power into the hands of the administration[21].. than a neglect of, or departure from, the rules of proceeding.

Moderation and discipline in action, born of the rules of order, preserve the autonomy and authentiticy of the Assembly.[22]

Its ubiquity often serves as a disguise, and though always felt, its

presence is rarely commented on. For example, parliamentary language and speaking procedure (which often appear both pedantic and archaic), whereby all speaking is directed at the Chair, tend to moderate the legislative ambiance. Furthermore, bills are laboriously subjected to the effort of being read three times and studied in committee before receiving royal assent, a protraction over time which induces moderation. As a corollary to this fact, moderation is cultivated and sustained by the very act of debate which aims at convincing rather than declaiming and requires, therefore, concilation and compromise.[23]

(iv) Fairness:

There are probably few verbs used more frequently in a Speaker's rulings than the word "fair": he is forever struggling to be fair, and (to be fair) so is the House as a whole. To be fair, is to be just, unbiased, equitable, legitimate and, importantly, in accordance with the rules. John Rawls, in his magnum opus, A Theory of Justice, argues that, in effect, fairness is one of the most fundamental political concepts. In his words:

> The main idea (behind the concept of fairness) is that when a number of persons engage in a mutually advantageous cooperative venture according to the rules, and thus restrict their liberty in ways necessary to yield advantages for all, those who have submitted to these restrictions have a right to a similar acquiesence on the part of those who have benefited from their submission.[24]

According to Rawls, and there are at least prima facie good reasons to agree with his arguments, fairness requires two conditions be met: (i) the institution in which it is to exist, must itself be just, and (ii) any actions committed therein must be voluntary.[25] For an institution, like the House, to be "just", it must adhere to two principles: First, "each member is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others"; and second, "social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's

advantage, and (b) attached to positions and offices open to all".[26]

A discussion of equality in the House will be undertaken below, the immediate concern is with the first principle of a just institution and with the concept of voluntary action. The latter point is disposed of most easily. All members of a parliament voluntarily place themselves in the institution by freely running as candidates in an election. Moreover, and more importantly, all votes taken in the Assembly are done so in the absence of any formal compulsion to vote one way or another.[27]

Regarding the former point, originally, which is to say before the House divided into government and opposition, the "basic liberty" enjoyed by each member was such that he who wished to speak to any business before the House, could do so and could for as long as he wished.[28] Moreover, he was at liberty to move ammendments to any bill or motion under consideration, within reasonable limits. Under the present rules of order in the Alberta Assembly, the Premier, the Leader of the Opposition, the mover on the occasion of the budget address, and the mover in debate on a Bill proposing substantive amendment to more than one statute, have 90 minutes speaking time.[29] In most other cases members are limited to 30 minutes.

The principum of fairness is also demonstrated in the way in which the Alberta Assembly has sought to accommodate its very small opposition. For example, the official opposition and various independent members have substantial budgets with which to do research;[30] question period has been designed so as to allow opposition members almost one hour in which to question cabinet ministers and the actual nature of permissible questions takes into account the difficulty opposition members have in excavating pertinent information; the official opposition has been allowed to designate a motion once each week, which will be debated on the floor of the House;[31] and finally, in a recent amendment to the Standing Orders, the Leader of the Opposition is

allowed to call one department forward for questioning once each week during debate on supply.[32]

The question of parliamentary privilege, specifically as it arose in the fall sittings of the Alberta Legislature, stands as a microcosm of the principle of balancing the "basic liberties" of individual members.

According to Erskine May, a point of personal privilege may be raised by a member when, in his mind, the rights of a member, necessary to discharging his duties as a member, are violated, thereby impairing his parliamentary efficacy.[33] This is a members basic liberty. On the other hand, there is a parliamentary custom which forbids a charge being laid against a member (in the form of a point of privilege), unless that member is given an opportunity to reply.[34] As Speaker Amerongen said, rather on the defensive,

> The question of privilege is closed for the time being. However, since it is necessary not only to be fair but also to appear to be fair, there is perhaps one further statement I should have made earlier. That is this: I do not know of any court in the world, worthy of the name, where the charge is read out without the person charged being in the courtroom.[35]

Two days hence, the Speaker circulated to all members of the Assembly, the material relevant to the question of privilege provided to him by Mr. Notley. While opposition members castigated him for this move, charging it to have been a breach of confidence, Speaker Amerongen defended his actions arguing judiciously that:

> In any case, the reason for disturbing the material is again basic fairness, the same reason for which the hon. member for Sprit River-Fairview was not prevented from expressing his views in the House. The expression of those views was merely postponed. . .In pursuit of this fairness, which is a parliamentary tradition and amply borne out by the most respected parliamentary authority in the Commonwealth, namely Sir Erskine May, this material, which came into my possession as the servant of the Assembly, and hence into the possession of the Assembly -- because whatever I get in that way belongs to the Assembly, unless it is a matter of confidential

> advice -- has been distributed for that purpose and, as I say, in keeping with the parliamentary tradition of fairness, so that when we deal with the question, everyone will be on the same footing more or less as the member who is going to raise the point of privilege.[36]

An interesting ancillary point is raised by the Speaker's argument, viz., fairness begets obligations -- he acted under an obligation to the House, an obligation to try to make all members more or less equally knowledgeable for the debate on the question of privilege. Rawls, too, raises this point. Fairness, he argues, engenders obligations under three conditions: (i) the question arises as a result of voluntary action, (ii) the content of that obligation is always defined by an institution or practice, the rules of which specify what one is allowed to do, and (iii) the obligations are normally owed to definite individuals, namely, those who are cooperating together to maintain the fairness arrangements in question.[37] In sum, the importance societal requisite of moral obligation is derived from the democratic principle of fairness.

(v) Equality

To be equal, roughly speaking, is to be evenly balanced or "the same", according to some standard of value. To say more than this without saying much more, would not be helpful and this parisimonious and not altogether enlightening definition will have to suffice here.

As a principle of parliamentary behavior, equality was enthroned early in parliamentary history (in the mid-1500s). All members of the House were equal, for example, insofar as (i) (originally) in the rules of debate, no member had a prior right to speak to a motion over any other member, (ii) in voting, no greater weight or prominence is attached to one member's vote than to another's, and (iii) (originally) no bill or motion received any

precedence because it was brought in by one member rather than another.[38]

As a fundamental principle, from which arises the expectation by members to be treated in certain ways, the concept of equality has tremendous psychological (and thus political) import. Members expect to be treated equally, in the context of procedural justice, through the impartial application and consistent interpretation of rules according to the precepts of treating similar cases similarly (as defined by statutes, rules and precedents). They therefore insist upon an impartial Speaker or referee.

Lord Campion writes, in this regard that,

> the prestige of (the Speaker's) unpartiality (the tradition of which has apread to all occupants of the chair both in the House and in any of its committees) is the keystone of the House of Commons' procedure.[39]

The office of the Speaker has two quite distinct functions: (i) he stands as the vindicator of the privileges of the Commons and their leader against any threat from the outside, and (ii) he serves as the moderator of their debates and charged with eliciting true collective decisions.[40] The democratic principle distilled from these observations is of profound importance - the government institution of a democratic polity must fulfill exactly the obligations of a Speaker in the House: a government must vindicate the rights of its citizens and vigorously defend both rights and citizens against any threat, and it must be a moderating body, eliciting true collective decisions about the will of the general populations. Moreover, it must be impartial and objective both in the formation and application of the laws: the "rule of law" must prevail.

In the principum of equality is also rooted the expectation, on the part of individuals (be they members or citizens), to share and enjoy the same basic rights and duties. The logic being that if each member is to count for the same and taken to contribute equally to the legislative process, they are

entitled to share equally in the rights and privileges of the Assembly. The Rules of Order guarantee this. (Presumably, if it can be proven that a citizen of a democracy or a member of Parliament does not fulfill his obligations, they forfeit their entitlement and need not be treated as equals.) In this rather crude way the parameter of equality in the fairness formula is met.[41]

Finally, and perhaps of even greater importance, the fundamental democratic principle of the rights of minorities also flows from the postulate of equality. When certain members of the House (ie. the minority, who become the opposition) lost the power to initiate business, they were, on the grounds of equality and a minority status, compensated in a variety of ways, viz., (i) some Houses introduced the idea of a designated motion for the opposition or opposition day, (ii) all Houses entrenched and protected their rights of criticism and questioning ministers of the Crown, (iii) in some cases there were allowanced made in the opposition's use of the motion to adjourn, and finally (iv) changes were made in the various forms of financial procedure (eg. the Chairman of the Public Accounts Committee is always a member of the opposition). Extending the argument, minority rights of criticism, tolerance, exception and preference must exist in a democratic society. They must not because members of minorities are "more than equal", but simply because in order to be equal they must be treated as such.

Section Two

As noted in the discussion of government, there are two constituent elements determining the nature of a regime: (i) the spirit (or principum) which, on being codified (one way or another), becomes the rules of the body, and (ii) the source of right, enabling both the codification and enforcement

of these fundamental principles. The five principia (procedural justice, flexibility, moderation, fairness and equality) have been discussed above. It remains, therefore to analyze parliamentary behavior to determine what is taken as the source of right.

As commonly understood, a "right" designates an entitlement: if a member has a right to speak his mind on a particular issue, and in a particular fashion, he is said to be entitled to do so. Entitlement is more than a permission in as much as it implies a justifiable claim to something and not simply the opportunity to have something. Needless to say, correlative duties are entailed in this motion of right: rights, in the sense of entitlements, only exists to the degree that duties and responsibilities recognized by claimants.[42]

To talk of rights in a discussion of parliamentary practice and rules of order, is really to talk of parliamentary privilege. Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament, the most cited text on parliamentary privilege, defines it as follows:

> Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by members of each House individually, without which they could not discharge their functions. . .[43]

The important phrases here are "rights enjoyed by each House collectively" and "by members. . .individually, without which they could not discharge their functions". Rights are recognized, or perhaps better put, exist, only insofar as they are entitlements which service the needs of the House. This important point is underlined by Hatsell, who writes:

> the distinctive mark of a privilege is its ancillary character. The privilege of Parliament are rights which are absolutely necessary for the due execution of its powers.[44]

Actually, there are certain rights (ie. the right to freedom from arrest or freedom of speech) which belong primarily to individuals and others (ie. the right of each House to regulate its own constitution) which deal with the Parliament's collective authority and belong primarily to the House as a collective body.[45] However, and importantly, the fundamental power of privilege, the power of self-government allowing the amendment of one's own constitution, is enjoyed and cherished by the House as a collective body.[46] Thus, in a democractic state, the power of self-government is not held by individuals qua individuals, but by individuals qua members of a collective body: rights are processed by virtue of continued and meaningful participation in a self-governing body; entitlements are enjoyed by individual members not for their own use, but to ensure the sovereignty of the whole assembly.[47]

This principle is clearly evinced in the Parliamentary discussion of the privilege of freedom of speech. As early as 1397 and the famous case of Thomas Haxey, freedom of speech was sought for by the House for its members while in the House.[48] Later, the argument was eloquently, if not altogether syllogistically, stated by a member of the House of Lords, in 1667, in the following way:

> No man can doubt. . .but whatever is once enacted is lawful, but nothing can come into an Act of Parliament, but it must first be affirmed or propounded by somebody: so that, if the Act can wrong nobody, no more can the first propounding. The members must be as free as the Houses; an Act of Parliament cannot disturb the state; therefore the debate that tends to it cannot; for it must be propounded and debated before it can be enacted.[49]

Put more generally, individual rights do not spring from an individual's nature, as such. Rather, they derive from a collectivist understanding of the individual as a inextricable and integral member of the social whole. This is an understanding of rights and individuals which run against any conception of the individual as essentially the proprietor of his own person, capacities and,

therefore, rights, for which he owes nothing to society.[50] It is an understanding of rights and individuals which assumes that rights flow from the collective body and, thus, are delimited in scope by that body. Speaker Amerongen made this point, with force and veracity, in an exchange with the leader of the opposition:

> Mr. R. Speaker: Mr. Speaker, I think I have a right to ask the question.
>
> Mr. Speaker: I'm sorry, if the hon. leader persists in (asking) it improperly, I can't recognize that right. His rights are subject, as are the rights of all other members of the Assembly. . .to the Standing Orders and to appropriate parliamentary procedure.[51]

What lies behind this understanding of individuals' rights in a particular understanding of Parliament, articulated by Jeremy Bentham, in writing:

> The formation of a united will is the object for which every parliamentary body exists. It is a priori conceivable that, to this end, the complete agreement of all members of the Assembly might be demanded.[52]

This statement accentuates two points: (i) the essential feature of a democratic body (ie. parliament or society) is its concern for the participation of each member in the process by which it is governed, and (ii) that rather than self-interested competition between individuals, interests and factions, co-operation and agreement by all on common principles, promotes the general good (which is taken as the end of a democractic body).[53]

Rousseau's Social Contract deals with the theme of the general good (or the common interest), in the context of a discussion of the "general will". In his words,

> As long as several men together consider themselves to be a single body, they have only a single will, which relates to their common preservation and the general welfare.[54]

In short, the general will is the single policy which is equally in the interests of all the members of the group, and is discovered by legislators when they ask themselves what measures will benefit them in common with all others,

rather than at the expense of everyone else.[55]

Rousseau also suggests that to avoid particular interests manifesting in the voting, small groups or parties should be prevented from forming (or, if they do form, they should be small and many). This state was, more or less, achieved in the early parliaments, full, as they were, of independents voting by their consciences and not political parties or factions. Moreoever, this is the reason behind the standing vote in the House (as opposed to a private ballot). In the protective darkness of a secret ballot it is feared that legislators might be tempted to favor their own private interests and come to regard the franchise as a private opportunity, forgetting that it is a public office.[56]

By Rousseau's reasoning, then, disagreements in voting can be due only to conflicts of (mistaken) opinion, not to conflicts of interests. Further, Rousseau asserts that a majority vote is more likely to be right than the vote of any given voter, so a minority member will, in fact, in the long-term gain from the majority's decision ruling. As Brian Barry has pointed out, this situation works so long as one allows for Rousseau's stipulations that everyone is co-operating to find a mutually beneficial policy and so long as everyone is taken as having an equal better than even chance of giving the right answer.[57] The formula Rousseau employs (implicitly) was discovered by Condorcet and works as follows:

> If we have a voting bloc of a thousand, each member of which is right an average fifty-one percent of the time, what is the probability in any particular instance that a fifty-one percent majority has the right answer? -- better than two to one (60 per cent). Moreover, if the required majority is kept at fifty-one percent and the number of votes raised to ten thousand, or if the number of voters stays the same and the required majority is raised to 60 per cent, the probability that the majority has the right answer rises virtually to unity (99.97 per cent).[58]

The following democratic principum, therefore, can be enucleated from this argument: Democractic rights are entitlements enjoyed at the cost (ie. obligation or duty) of having citizens' (members') deliberations being comprised of two elements: (i) the decision by each person to forgo policies which would be only in their personal interest alone, or in the common interest of only a particular group, and (ii) the attempt by each citizen (member) to calculate which, of the various policies under consideration, would affect them equally with all others. Democratic citizens must forever raise Aristotle's question: of whether "democratic behavior" means the behavior that democracies like for the behavior that will likely preserve a democracy. Thoughtful reflection will, invariably, demonstrate that these two answers not be the same.

Conclusion

Construction of any model of democracy must be guided by an intricate, not to mention stolid, set of blueprints. As argued above, the broad architectural lines of this model can be drawn after studying the way Parliament treats itself; behavior from which can be enucleated six democratic principia. Thus, by way of conclusion, a democratic regime is one characterized by the following traits: (i) procedural justice: in the relations between government and people, a verdict handed down by that government is just when it is a correct application of the relevant rule of law, a law which had been appropriately promulgated and applied equality to all. Questions of right and wrong, good and bad must be decided before the law is framed and rendered "out of order" after proclamation. Mechanisms to reshape, abrogate and create new laws, must, of course, also exist; (ii) flexibility: the only rule etched in stone is that principles (and

particularly the principle of flexibility and adaptability) must always be vigorously defended and adhered to. The content of those principles must be derived from thoughtful reflection and observation, taking in consideration changing circumstances and new parameters;

(iii) moderation: a spirit of moderation must pervade all relations and dictate most actions (even to the point of being moderate in one's moderation). Rules and the discipline born of such rules, must be recognized as preserver of the autonomy and authenticity of the polis and such rules are effective only insofar as temperate citizens create and abide by them: evolution rather than revolution must distinguish the state;

(iv) fairness: as far as is possible actions within the polis must be committed voluntarily and in a manner ensuring that each member is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others. This principle of fairness, therefore, is inherently related to a levelling process, whereby rights and duties, freedoms and obligations are balanced;

(v) equality: all members of the polis, both in the name of fairness and prudence, must be regarded as counting for the same and be counted on the contribute as equally as possible to the welfare of the whole. This principum demands impartiality and defence for minorities (two requisites which are potentially at odds) to be the mainstay of government action, and, finally;

(vi) collective rights: rights exist as entitlements enjoyed by individuals not for selfish private ends but public ends ensuring the sovereignty and vitality of the social whole, from which all rights are born. This understanding of rights speaks to the need for individual participation in the government of the whole and the desire for co-operation and concerted action on common principles serving the needs of all.

Footnotes

1. Cf. J.S. Mill, Considerations on Representative Government, (Oxford, Blackwell, 1946); J. Bentham, Theory of Legislation, trans. R. Hildreth, (London, Kegan Paul Trench, 1904); J.C. Adams, The Quest for Democratic Law; the Role of Parliament in the Legislative Process, (New York, Crowell, 1970); K.C. Wheare, Legislatures, 2nd ed. (London, Oxford University Press, 1968).
2. For a multifarious discussion of democracy cf. J.R. Pennock, Liberal Democracy: Its Merits and Prospects, (New York, Rinehart, 1950); A.D. Lindsay, The Essentials of Democracy, (Philadelphia, University of Pennsylvania Press, 1929); R. Dahl, Preface to Democratic Theory, (Chicago, University of Chicago Press, 1956); C.B. Mcpherson, Democratic Theory: Essays in Retrieval, (Oxford, Clarendon Press, 1973).
3. This, of course, would include those principles which, when codified, determine the process by which other laws are made (ie. in free and public vote of all members). The important point here is simply that principles precede prescriptions.
4. Lord Campion, An Introduction to the Procedure of the House of Commons, 3rd ed. (London, Macmillian and Co. Ltd., 1958) p. 1.
5. Even after this refinement, the term concatenates quite a "mixed-bag", with some of these matters completely within the control of the House and others prescribed by the particular way in which the parliament is constituted. These more subtle distinctions, while acknowledged, will not be touched upon in the body of this essay.
6. Rule 2, Standing Orders of the Legislative Assembly of Alberta, Effective May 19, 1975.

7. The invaluable insights and suggestions gleamed from reading Campion's book must here be acknowledged.
8. Redlich, op cit, Vol. 1 Introduction, p. xxi.
9. Campion, op cit, p. 41 Cf. Redlich, ibid, Vol. 1, "The winds of democracy began to blow and the representatives of the newly enfranchised middle-classes took legislation and administration more seriously and earnestly than their predecessors." p. xvii.
10. Cf. Rule 1, Standing Orders of the House of Commons of Canada, adopted 1867.
11. Cf. Rule 114, Rules, Orders and Forms of the Proceedings of the Legislative Assembly of Alberta, adopted 1906.
12. J. Hatsell, Precedents of Proceedings in the House of Commons, with observations, Reprints c. 1971, (London, Hansar, 1818), Vol. II, p. 207.
13. H. Sidgwick, The Method of Ethics, 7th ed. (London, Macmillian, 1907) Book III, Chapter V, p. 406 Sidgwick importantly, also noted that it can be said (pace Hobbes!) that the law is itself injust. This definition of procedural justice should not be taken as the only one available. Indeed, John Rawls puts forth quite a different definition, saying, "pure procedural justice obtains when there is no independent criterion for the right result: instead there is a correct or fair procedure such that the outcome is likewise correct or fair, whatever it is, provided that the procedure has been properly followed". A Theory of Justice, (Cambridge, Mass., Harvard University Press, 1971) p. 86.
14. B. Barry, Political Argument, (London, Routledge and Kegan Paul, 1965) pp. 100-101.
15. Though, as Barry acknowledges, this is a rather weak sort of equality because the basis of "likeness" is stipulated by the rule and it may be

outrageous. Ibid, pp. 100-101.

16. As Barry states, "Whatever it is that the race is supposed to be testing, it is hard to see how its reliability would be improved if some competitors got away with jumping the gun, except in the perverse case where the race is a blind and the real test is in gun-jumping ability." Ibid, p. 103.

17. Alberta Hansard, November 25, 1981, p. 1853.

18. Cf. The role of Mr. Speaker as laid out in the Alberta Standing Orders especially Chapter 2, Sections 11-14.

19. Standing Orders of the Legislative Assembly of Alberta, effective May 19, 1975.

20. Cf. Ibid, Rule 29.

21. Quoted in Campion, op cit, p. 29.

22. Baron de Montesquieu, in his Spirit of Laws, argued that "virtue" was the nature characteristic demanded of democratic institutions. "Moderation", he felt, was the soul of aristocratic government. The Spirit of Laws, trans. T. Nurgent, Rev. Ed. Vol I (London, The Colonial Press, 1908) pp. 21-23. It is perhaps, therefore, noteworthy that the British Parliament evolved from a very artistocratic body. The word, derived from the french parlement, is found in English from the 13th Century, first referring to debate, then a formal conference and finally for the great councils of the Plantagenet Kings. William the Conqueror, according to the Anglo-Saxon Chronicle, is said to have had "very deep speech (parlement) with his Witan". The Statute of Westminister (1275) first used "parlement" for the great council of England, a most aristocratic group.

23. This was especially true before the party system and its vigorous discipline was instituted, and when individual members were actually swayed

by debate.

24. John Rawls, op cit, p. 112, Cf. H.L.A. "Are There Any Natural Rights?" Philosophical Review, Vol. 64, (1955) esp. p. 185.

25. Rawls, Ibid, p. 60, For further clarification see pp. 150-161.

26. Rawls, Ibid, p. 60.

27. It goes without saying that, at times, a good deal of suasion is exercized by the Whip in House voting, but at no times does a member have to vote in a particular way. The only exception to this may be the Speaker, who is required to vote in the case of a tie vote on the floor of the House, be the way in which he votes is dictated by his conscience only. Paranthetically, it is interesting to note that while members are not required to be in the House for a vote, they must inform the Speaker that they will be absent. (Rule 10, Standing Orders of the Legislative Assembly of Alberta.) There is one exception to all this, of course. Rule 31(1) states that "No member is entitled to vote upon any question in which that member has a direct pecuniary interest and the vote of any member so interested will be disallowed".

28. As Campion notes, the distinction between Government seats and Opposition seats in Westminister Hall seems to have been established during Sir Robert Walpole's premiership, after the Glorious Revolution. op cit, p. 60. In the early 1700s the Cabinet began to gain predominace in the Assembly, making government the leaders of the majority of the House, and taking upon itself the right of initiating expenditure. Ibid, p. 28. Redlich argues that the years 1688 - 1832 constituted the "true golden age of the English parliamentary system (sic) as the party system had not yet gained much strength". op cit, p. 68 f. Closure and limits on members' speaking

times were suggested by Speaker Brand in response to a filibuster by the Irish Nationalists, in 1881.

29. Rule 28(a) Standing Orders, as amended March 29, 1982. Previously, these speakers had unlimited speaking time.

30. In 1981-82, opposition members' service budgetary estimates were $528,507. Government members' services received $539,075. There were six opposition members and 41 government backbenchers.

31. Rule 8(3)(b), Temporary Standing Orders, effective May 30, 1979.

32. Rule 51(1)(4), Standing Orders, as amended March 29, 1982.

33. Erskine May, Treatise on the Laws, Privileges, Proceedings and Usages of Parliament, ed. Sir David Lidderdale, 1912 edition, (London, Butterworth's, 1976), p. 67.

34. The controversial point here being just when the member charged must be allowed the opportunity to reply - at the time the point is raised or at the time the Speaker is called on to decide whether there is a prima facie case for the question.

35. Alberta Hansard, November 29, 1981, p. 1811. Later,on November 26, 1981, the member from Spirit River-Fairview, Grant Notley, cited several examples of where a point of privilege was put to the House in the absence of the member charged and then held over for discussion until he was present. (Cf. October 27, 1977 in the House of Common, question of privilege put by the hon. member for Oshawa-Whitby to the Prime Minister and May 27, 1975, question put by the Rt. Hon. John Diefenbaker, again to the Prime Minister in his absence. In both cases the matter was held over for discussion until the Prime Minister was present.)

36. Alberta Hansard, November 26, 1981, p. 1877.

37. Rawls, op cit, p. 113, Cf. H.L.A. Hart, "Legal and Moral Obligations" in Essays in Moral Philosophy, ed. A.I. Melden, (Seattle, University of Washington Press, 1958), pp. 100-105 for a general dicussion of obligation.

38. Cf. Campion, op cit, p. 18 of course, in several respects, this equality has been eroded with the ascent of the party system.

39. Campion, op cit, p. 50. Unfortunately, but perhaps to be expected, not all members always acknowledge the Speaker's impartiality. For example, the following debate occurred in the spring sittings of the Alberta Legislative Assembly: "Mr. Speaker (Amerongen):'I respectfully ask the hon. leader to resume his seat.' Mr. R. Speaker: 'If you want to protect the government go ahead.' Mr. Speaker (Amerongen):'Order please. The remark about the chair protecting the government is also totally out of order. As far as I am aware, there are very few places where, if a ruling or decision is made, the participants enjoy the privilege of chewing-out the referee. That is particularly a rule in our parliaments.'" Alberta Hansard, April 16, 1982, p. 619.

40. Campion, op cit, p. 42. Equality is a factor in regards to the Speaker in yet another way. As an elected member of the Assembly the Speaker is entitled equally to all the rights processed by other members. In part, it is from this equality that his authority flows and his entitlement to demand respect from the members.

41. See above pages 8-9.

42. There is much debate over the nature of rights and this should be acknowledged here and remembered throughout this discussion.

43. Erskine May, op cit, p. 67.

44. Hatsell, op cit, Vol. I, p. 1

45. Cf. Cushing, Legislative Assemblies, par. 531, cited in May, op cit, p. 68. Article 9 of the Bill of Rights of 1621, the only declaration of the law of Parliament, consisted in part, of claiming, superiority for the lex Parliamenti over the common law. Moreover, it articulated three principles. One dealt with the meaning of the term "proceedings in Parliament" (ie. some formal action, usually a decision taken by the House in its collective capacity)! The second dealt with the right of Parliament to punish its own members for their conduct, and finally, the right of each House to be the sole judge of the lawfulness of its own proceedings. This formal declaration of autonomy entailed at least two points: (i) the House could settle its own "code of procedure", and (ii) the establishment of the collective privilege of the House to decide what it will discuss and in what order. May, Ibid, pp. 84-87.

46. Although either House may expound the law of Parliament, and vindicate its own privleges, it is agreed that, by itself, neither House can create a new privilege. In 1704, as recorded in the Commons Journals, the Lords communicated a resolution to the commons at a conference "That neither House of Parliament hath any power, by any vote or declaration, to create to themselves any new privilege, that is not warranted by the known laws and customs of Parliament", which was assented to by the Commons. May, Ibid, p. 72.

47. In this regard, while it might seem in bad taste, Prime Minister Trudeau's remark that, once some members (ie. opposition) walked 50 yards from the Parliament buildings they became "nobodies", was actually quite close to the mark!

48. Ironically, Haxey was not actually a member of Parliament himself. He was King's Clerk under Richard II.

49. Cited in May, op cit, p. 73

50. Cf. C.B. Macpherson, The Political Theory of Possessive Individualism: Hobbes to Locke, (London, Oxford University Press, 1962) p. 3 and 263 especially.

51. Alberta Hansard, November 26, 1981, p. 1875.

52. Quoted in Redlich, op cit, Vol. III, p. 188.

53. Herein lies the significance of the phrase "Her Majesty's Loyal Opposition". Moreover, as Joseph Tussman argues, "the craving to excell others is only a corrupt form of the craving for excellence". Obligation and the Body Politic, (New York, Oxford University Press, 1960) p. 113. Hopefully, parliamentarians and all good democrats will recognize this point.

54. Jean-Jacques Rousseau, On The Social Contract, ed. Roger Masters, trans. J. Masters, (New York, St. Martin's Press, 1978) Book VI, Chapter I, p. 109. (Cf. Book II, Chapter III, p. 61.) Rousseau, in the work, states three conditions for a democratic state, in addition to and supported by a sense of civil virtue (which he doesn't feel men can obtain) viz., (i) it be very small so that people are easily assembled and know each other, (ii) it establish very simple mores, and (iii) there be great equality of rank and fortune. Book III, Chapter IV, p. 85.

55. Rousseau, Ibid, Book IV, Chapter IV, p. 109.

56. Cf. J.S. Mill, op cit, Chapter X, pp. 80-81

57. B. Barry, "The Public Interest" in Political Philosophy, ed. Anthony Quinton, (Oxford, Oxford University Press, 1967) pp. 121-122.

58. B. Barry, Ibid, p. 122 Cf. D. Black, Theory of Committees and Elections, p. 164.